

UNITED STATES DISTRICT COURT
SOUTHERN DISTRICT OF NEW YORK

JOSEPH CRACCO,

Plaintiff,

-against-

THE CITY OF NEW YORK, Police Officer JONATHAN CORREA, Shield 7869, Transit Division District 4, Police Officer John Doe (a fictitious name) and CYRUS VANCE, JR., in his official capacity as District Attorney for the County of New York,

Defendants.

STIPULATION AND
ORDER OF
SETTLEMENT OF
ATTORNEY'S FEES,
EXPENSES, AND
COSTS

14 CV 8235 (PAC)

WHEREAS, plaintiff Joseph Cracco commenced this action by filing a complaint on or about October 14, 2014, and a first amended complaint on or about February 17, 2015 adding Cyrus Vance, Jr. as a party, alleging that defendants violated his federal civil and state common law rights; and

WHEREAS, defendant Cyrus Vance, Jr. denies any and all liability arising out of plaintiff's allegations; and

WHEREAS, on or about November 14, 2015, the Court dismissed plaintiff's claims against the City of New York and Jonathan Correa upon their motion to dismiss pursuant to Rule 12(b)(6), Federal Rules of Civil Procedure; and

WHEREAS, on or about March 27, 2019, the Court granted plaintiff's motion for partial summary judgment against defendant Cyrus Vance, Jr. with respect to plaintiff's Ninth Cause of Action in the Amended Complaint and issued a declaratory judgment; and

WHEREAS, on or about April 24, 2019, defendant Cyrus Vance, Jr. filed a notice of appeal of the Court's partial summary judgment order in plaintiff's favor on his Ninth Cause of Action and Clerk's Judgment of March 28, 2019, to the Second Circuit Court of Appeals; and

WHEREAS, on or about November 25, 2020, the Second Circuit Court of Appeals vacated the Court's summary judgment decision in plaintiff's favor with instructions to the Court to dismiss the case, on the grounds of mootness due to the repeal of the subject gravity knife statute; and

WHEREAS, on or about November 30, 2020, the Court dismissed plaintiff's complaint against Cyrus Vance, Jr. as moot;

WHEREAS, plaintiff moved to reopen the case on March 5, 2021, on the limited grounds that he is entitled to attorneys' fees, expenses and costs herein;

WHEREAS, counsel for Cyrus Vance, Jr. and counsel for plaintiff now desire to resolve the issue of attorneys' fees, expenses, and costs, without further proceedings;

WHEREAS, plaintiff's counsel represents that plaintiff has assigned all of his rights to attorneys' fees, expenses, and costs to his counsel, James M. Maloney, Esq.; and

WHEREAS, plaintiff has authorized his counsel to settle this matter on the terms set forth below;

NOW, THEREFORE, IT IS HEREBY STIPULATED AND AGREED, by and between the undersigned, the attorneys of record for the respective parties to the above-captioned action, as follows:

1. The City of New York hereby agrees to pay plaintiff's counsel, James M. Maloney, Esq., the total sum of Twenty Two Thousand Five Hundred (\$22,500.00) Dollars in

full satisfaction of plaintiff's claims for attorneys' fees, expenses, and costs. In consideration for these payments to James M. Maloney, Esq., counsel for plaintiff agrees to release and discharge defendant Cyrus Vance, Jr. and the City of New York; their successors or assigns; and all past and present officials, employees, representatives, and agents of the New York County District Attorney's Office, the City of New York or any entity represented by the Office of the Corporation Counsel, from any and all claims for attorneys' fees, expenses, and costs that were or could have been alleged in the aforementioned action.

2. Counsel for plaintiff hereby agrees and represents that no other claims for attorneys' fees, expenses, or costs arising out of this action shall be made by or on behalf of plaintiff in any application for attorneys' fees, expenses, or costs at any time.

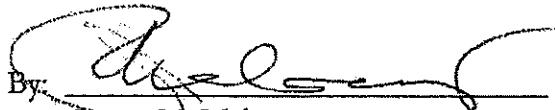
3. Nothing contained herein shall be deemed to be an admission by the defendant Cyrus Vance, Jr. that he has in any manner or way violated plaintiff's rights, or the rights of any other person or entity, as defined in the constitutions, statutes, ordinances, rules or regulations of the United States, the State of New York, or the City of New York or any other rules or regulations of any department or subdivision of the City of New York. This stipulation shall not be admissible in, nor is it related to, any other litigation or settlement negotiations, except to enforce the terms of this agreement.

4. This Stipulation contains all the terms and conditions agreed upon by counsel for defendant Cyrus Vance, Jr. and counsel for plaintiff hereto, and no oral agreement entered into at any time nor any written agreement entered into prior to the execution of this Stipulation and Order regarding the subject matter of attorneys' fees, expenses, or costs shall

be deemed to exist, or to bind the parties hereto, or to vary the terms and conditions contained herein.

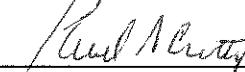
JAMES M. MALONEY
Attorney for Plaintiff
33 Bayview Ave.
Port Washington, New York 11050

NEW YORK COUNTY DISTRICT
ATTORNEY'S OFFICE
Attorney for Defendant Cyrus Vance
80 Center Street
New York, New York 10013

By: 
James M. Maloney
Attorney for Plaintiff

By: 
Patricia J. Bailey

SO ORDERED:


HON. PAUL A. CROTTY

Dated: New York, New York
May 20, 2021